

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING A FACILITIES LEASE (HISTORIC CITY HALL BUILDING) BETWEEN THE CITY OF BRIGHTON, COLORADO, AS LESSOR, AND BRIGHTON PUBLIC FACILITIES LEASING TRUST 2016, AS LESSEE, FOR CERTAIN PROPERTY CONSTITUTING THE EXISTING HISTORIC CITY HALL BUILDING AND AN ANNUALLY RENEWABLE LEASE PURCHASE AGREEMENT (HISTORIC CITY HALL BUILDING) BETWEEN BRIGHTON PUBLIC FACILITIES LEASING TRUST 2016, AS LESSOR, AND THE CITY OF BRIGHTON, COLORADO, AS LESSEE, FOR SUCH PROPERTY; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH DOCUMENTS AND RELATED OTHER AGREEMENTS; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; RATIFYING ACTION PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATING THERETO.

ORDINANCE NO. 2228

INTRODUCED BY: Edwards

WHEREAS, the City of Brighton, Colorado (the "City"), is a municipal corporation duly organized and existing as a home-rule city under Article XX of the Colorado Constitution and under of the home rule charter of City (the "Charter"), and is a political subdivision of the State of Colorado (the "State");

WHEREAS, subject to certain exceptions, all legislative powers possessed by the City, conferred by Article XX of the State Constitution, or contained in the Charter, as either has from time to time been amended, or otherwise existing by operation of law, are vested in the City Council of the City (the "City Council");

WHEREAS, the City is authorized, pursuant to Article XX of the State Constitution and the Charter and its plenary grant of powers as a home rule city, to enter into lease purchase agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes and to acquire, hold, lease and dispose of, as lessor or as lessee, real and personal property;

WHEREAS, the City owns the historic city hall building and related facilities and the land on which such historic city hall building and related facilities are located, including the building and related parking, paving, drainage and landscaping improvements located on such land (collectively, such building, other improvements and the land on which such building and other improvements are located, the "Facilities");

WHEREAS, the City has determined to enter into the 2016 Facilities Lease as described and defined below, with the Brighton Public Facilities Leasing Trust 2016 (the "Trust"), a trust to be created by the Trustee pursuant to the 2016 Indenture, each as described and defined below, under which the City, as lessor, will lease the Facilities to the Trust, as lessee;

WHEREAS, the City has determined and intends to enter into the 2016 Lease as described and defined below, with the Trust, under which the City, as lessee, agrees to lease, with an option to purchase, the Facilities from the Trust, as lessor, the leasehold interest of the Trust in the Facilities created under the 2016 Facilities Lease, such leasehold interest constituting the Leased Property under the 2016 Lease;

WHEREAS, there have been filed on February 23, 2016, in the office of the City Clerk for the City (the "City Clerk") the substantially final forms of the following:

(1) Facilities Lease (Historic City Hall Building) including Exhibits A and B thereto to be dated its date of execution and delivery (the "2016 Facilities Lease"), between the City, as lessor, and the Trust, as lessee;

(2) Lease Purchase Agreement (Historic City Hall Building) including Exhibits A through D thereto to be dated its date of execution and delivery (the "2016 Lease"), between the Trust, as lessor, and the City, as lessee; and

(3) Declaration and Indenture of Trust (Denver Public Facilities Leasing Trust 2016) including Exhibits A through E thereto to be dated its date of execution and delivery (the "2016 Indenture"), entered into by Zions Bank, a division of ZB, National Association, Denver, Colorado, as trustee (the "Trustee"), pursuant to which the Trust will be created and under which a Certificate of Participation, Tax-Exempt Series 2016A (Historic City Hall Building) in the principal amount of \$[4,470,571] (the "2016A Certificate") and a Certificate of Participation, Taxable Series 2016B (Historic City Hall Building) in the principal amount of \$[2,529,429] (the "2016B Certificate" and, collectively, with the 2016A Certificate, the "2016 Certificates"), evidencing proportionate interests in the Trust's rights to receive certain revenues, including Tax-Exempt Base Rentals and Taxable Base Rentals, under the 2016 Lease, are to be executed and delivered by the Trustee; and

WHEREAS, the proceeds of the leasing of the Facilities by the City, as the lessor under the 2016 Facilities Lease, are to be used by the City to fund the costs of a capital improvement project described as energy conservation improvements to the City's municipal water and wastewater systems and certain other City facilities (the "2016 Capital Project"); and

WHEREAS, the City Council finds and determines that the terms of the 2016 Facilities Lease and the 2016 Lease are reasonable, and further finds and determines that it is in the best interests of the City to enter into the 2016 Facilities Lease and 2016 Lease with the Trust.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Ratification of Actions. All action heretofore taken, not inconsistent with the provisions of this ordinance, by the City or its officers, directed toward the leasing by the Trust from the City of the Facilities pursuant to the 2016 Facilities Lease and the leasing by the City from the Trust of the leasehold interest in the Facilities pursuant to the 2016 Lease is hereby ratified, approved and confirmed.

Section 2. Findings; Authorizations. This ordinance is adopted pursuant to the City's powers as a home rule city organized and operating under the Charter and Article XX of the State Constitution; and the City hereby determines that each and every matter and thing as to which provision is made herein is necessary in order to carry out and to effect the purposes hereof.

The City Council hereby finds and determines, pursuant to the City's home rule powers, that the following actions are necessary, convenient and in furtherance of the governmental purposes of the City and are in the best interests of the City and its residents:

- (1) the leasing of the Facilities to the Trust pursuant to the 2016 Facilities Lease; and
- (2) the leasing of the Facilities from the Trust pursuant to the terms and provisions of the 2016 Lease.

The City Council hereby authorizes (1) the leasing of the Facilities to the Trust pursuant to the 2016 Facilities Lease and (2) the leasing of the Leased Property (the leasehold interest of the Trust in the Facilities) from the Trust under and pursuant to the terms and provisions of the 2016 Lease.

Section 3. Approvals; Execution of Documents; Authorized Officers. The 2016 Facilities Lease and the 2016 Lease in substantially the forms as filed in the records of the City Clerk are in all respects approved. The Mayor is hereby authorized and directed to execute and deliver, and the City Clerk is hereby authorized and directed to affix the seal of the City to, and attest, the 2016 Facilities Lease and the 2016 Lease, in substantially the forms as filed in the records of the City Clerk.

Section 4. No General Obligation or Other Indebtedness. The obligation of the City to make rental payments under the 2016 Lease is subject to annual appropriation by the City Council and constitutes an undertaking of the City to make current expenditures. No provision of this ordinance, the 2016 Facilities Lease, the 2016 Lease, the 2016 Indenture or the 2016 Certificates shall be construed as constituting or giving rise to a general obligation or other indebtedness or a multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. On an annual basis the City may choose to not renew, and thereby terminate its obligations under, the 2016 Lease.

Section 5. Reasonable Rentals. The City Council hereby determines and declares that the Base Rentals due under the 2016 Lease do not exceed a reasonable amount so as to place the City under an economic compulsion to renew and therefore not to terminate the 2016 Lease or to exercise its option to purchase the leasehold interest of the Trust in the Facilities, all pursuant to the 2016 Lease.

Section 6. Consent to Sale of 2016 Certificates. The City Council hereby acknowledges and consents to (1) the 2016 Indenture and (2) the execution and delivery by the Trustee of, the forms of, and the private placement sale of, the 2016A-B Certificates, all pursuant to the 2016 Indenture, in substantially the form of the 2016 Indenture filed in the records of the City Clerk.

Section 7. Additional Documents; Delegated Powers. The Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this ordinance. Within a reasonable time following the effective date of this ordinance, the Mayor, the City Clerk, the City Manager, the Finance Director and other officials and employees of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this ordinance. Such necessary or appropriate actions include, without limitation,

(1) the determination by the City Manager of the date (which shall be the delivery date) of the 2016 Facilities Lease and the 2016 Lease, and

(2) the execution and delivery of such certificates and opinions as may be reasonably required by the City Attorney, the City's special lease counsel, the Trustee or the private placement purchaser of the 2016 Certificates or relating to, among other things, the tenure and identity of the officials of the City and the City Council, the absence of pending litigation affecting the validity of the 2016 Facilities Lease and the 2016 Lease, federal and state securities laws, and expectations and covenants relating to the excludability from gross income for federal income tax purposes of the portion of Tax-Exempt Base Rentals under and as defined in the 2016 Lease, designated in the 2016 Lease and paid as interest under the 2016 Lease, all as contemplated by this ordinance and are not inconsistent with this ordinance.

Section 8. Severability. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 9. Effective Date. This ordinance shall take effect as provided in the Charter of the City.

Section 10. Publications. The bill for this ordinance and this ordinance are hereby authorized and directed to be published as required by the Charter.

Section 11. Recordation and Authentication. The ordinance shall be recorded after its passage in the ordinance record of the City, kept for that purpose, and authenticated by the signature of the Mayor and attested and countersigned by the City Clerk.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 1st DAY OF MARCH, 2016.


CITY OF BRIGHTON, COLPORADO


Richard N. McLean, Mayor

ATTEST:


Natalie Hoel, City Clerk

APPROVED AS TO FORM:


Margaret R. Brubaker, City Attorney

Published in the *Standard Blade*
First Publication: March 9, 2016

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE
ONLY THIS 15th DAY OF MARCH, 2016.

CITY OF BRIGHTON, COLORADO


Richard N. McLean, Mayor

ATTEST:


Natalie Hoel, City Clerk

Published in the *Denver Post*
Final Publication: March 18, 2016